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In re Application of:	:	
CURAUDEAU, ALAIN H. et al.	:	DECISION
PCT Application No.: PCT/CA2005/000141	:	
US Application No.: 10/588,571	:	
Int. Filing Date: 04 February 2005	:	UNDER
Priority Date: 06 February 2004	:	
Atty Docket No.:249692001600	:	
For: PHOTODYNAMIC THERAPY FOR THE	:	37 CFR § 1.47(a)
TREATMENT OF ACNE	:	

This is in response to applicants' "PETITION TO FILE DECLARATION ON BEHALF OF THE NONSIGNING INVENTOR WHO REFUSES TO SIGN UNDER 37 C.F.R. §1.47(A)" and the "RENEWED PETITION UNDER 37 C.F.R. §1.47(a)" received on 14 January 2008 and 05 September 2008, respectively.

BACKGROUND

On 04 February 2005, applicants filed international application PCT/CA2005/000141.

On 03 August 2006, applicant filed a submission for entry into the national stage in the United States, which was accompanied by, inter alia, a preliminary amendment to the claim. The papers were assigned U.S. application number 10/588,571.

On 29 October 2007, the DO/EO/US mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 14 January 2008, applicants submitted a declaration and a "PETITION TO FILE DECLARATION ON BEHALF OF THE NONSIGNING INVENTOR WHO REFUSES TO SIGN UNDER 37 C.F.R. §1.47(A)"

On 05 September 2008, applicant filed the present petition under 37 CFR 1.47(a) requesting acceptance of the application without an inventor's signature.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(g), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, and (4) an oath or declaration by the other joint inventors on behalf of and as agent for the non-signing inventor.

With regard to item (1) above, the requisite petition fee will be charged to Deposit Account No. 03-1952.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where a refusal to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

The petitions state that Dr. Patrick M. Curry refused to sign the application paper. An affidavit was provided by Vandhana Misri, which indicated that the former paralegal, Cherie

Davis, at QLT Inc. mailed the paper to Dr. Curry for signature on 14 September 2007. Ms. Davis has provided an affidavit indicating that Dr. Curry was uncooperative regarding execution of the declaration. Ms. Misri, who became responsible for obtaining the signature after the departure of Ms. Davis, emailed Dr. Curry on 20 September 2007 to request the declaration. The affidavit states that Mr. Curry in a written email refused to return any signed document. However, applicants have not given any of Dr. Curry's email replies except the first and the reply has portions redacted with no explanation.

With regard to item (3) above, the petition failed to state the nonsigning inventor's last known address.

With regard to item (4) above, the oath or declaration executed by the applicants on behalf of and as agents for the nonsigning inventor is defective. Where individual declarations are executed, as in this case, they must be submitted as individual declarations rather than combined into one declaration.

Based on the above, applicants have not satisfied the final three requirements for a grantable petition under 37 CFR 1.47(a).

CONCLUSION

For the reasons above, the petition under 37 CFR 1.47(a) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file a proper response will result in abandonment of the application. Extensions of time under 37 CFR 1.136 are available. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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